

106TH CONGRESS
2D SESSION

S. 2863

To prohibit use or sharing of medical health records or information by financial institutions and their affiliates, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 13, 2000

Mr. SMITH of New Hampshire introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To prohibit use or sharing of medical health records or information by financial institutions and their affiliates, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Health Information
5 Protection Act of 2000”.

6 **SEC. 2. PROHIBITIONS ON SHARING OF HEALTH INFORMA-**
7 **TION.**

8 (a) IN GENERAL.—Section 502 of the Gramm-Leach-
9 Bliley Act (15 U.S.C. 6802) is amended by adding at the
10 end the following:

1 “(f) SHARING OF HEALTH INFORMATION PROHIB-
2 ITED.—

3 “(1) IN GENERAL.—Notwithstanding subsection
4 (a) or (b), and except as provided in paragraph
5 (2)—

6 “(A) no financial institution or affiliate
7 thereof may receive from, provide to, or other-
8 wise share with any nonaffiliated third party
9 any individually identifiable health information
10 with respect to a consumer to perform services
11 for or functions on behalf of the financial insti-
12 tution or affiliate, including marketing of its
13 own products or services or of financial prod-
14 ucts or services offered under a joint agreement
15 between 2 or more financial institutions; and

16 “(B) no financial institution or affiliate
17 thereof may receive from, provide to, or other-
18 wise share with any other affiliate any individ-
19 ually identifiable health information with re-
20 spect to a consumer.

21 “(2) EXCEPTIONS.—

22 “(A) PAYMENTS.—Paragraph (1) does not
23 preclude the sharing of information in connec-
24 tion with the collection of or payment of a
25 medically related debt or insurance claim, lim-

1 ited to information about the specific item,
 2 service, procedure, or condition that is the sub-
 3 ject of the debt or claim.

4 “(B) CONSENT.—

5 “(i) IN GENERAL.—Paragraph (1)
 6 does not apply if the financial institution
 7 or affiliate thereof that intends to share in-
 8 dividually identifiable health information
 9 relating to a consumer—

10 “(I) has clearly and conspicu-
 11 ously requested in writing, in accord-
 12 ance with clause (ii), that the con-
 13 sumer consent to such sharing;

14 “(II) has obtained affirmative
 15 written consent from the consumer for
 16 such sharing, and such consent has
 17 not been withdrawn; and

18 “(III) requires the same health
 19 information about all consumers for
 20 the intended use of the information.

21 “(ii) FORMAT OF WRITTEN RE-
 22 QUEST.—A request for consent under
 23 clause (i)(I)—

1 “(I) shall be contained in a sepa-
2 rate form, intended only for that pur-
3 pose;

4 “(II) shall specify that the con-
5 sent is being sought to provide indi-
6 vidually identifiable health informa-
7 tion to an affiliate or a nonaffiliated
8 party, as the case may be; and

9 “(III) shall specify with whom
10 and for what purpose the information
11 will be shared.

12 “(iii) WITHDRAWAL OF CONSENT.—A
13 consumer that has given written consent to
14 the sharing of individually identifiable
15 health information under this subpara-
16 graph to any person may withdraw such
17 consent in writing at any time. No person
18 shall be in violation of this subsection for
19 the lawful sharing of individually identifi-
20 able health information under this sub-
21 paragraph before the date of receipt of a
22 written withdrawal of consent under this
23 clause.

24 “(C) VOLUNTARY INFORMATION.—Nothing
25 in this subsection precludes a consumer from

voluntarily providing individually identifiable health information to a life, health, or disability insurer that is an entity described in paragraph (1).

“(3) LIMITATION ON ADVERSE ACTION.—A financial institution or affiliate thereof, that is not organized for the purpose of underwriting insurance products, subject to other applicable law, may not establish the terms of a financial transaction, make a decision to offer, provide, or continue to provide a product or service to a consumer, or otherwise take any adverse action with respect to the consumer—

“(A) based on individually identifiable health information; or

“(B) based on whether or not the consumer consents to the sharing of such information in response to a consent request under paragraph (2)(B).

“(4) LIMITS ON REDISCLOSURE AND REUSE OF INFORMATION.—

“(A) IN GENERAL.—A financial institution, affiliate, or nonaffiliated third party that receives individually identifiable health information from a financial institution or affiliate in accordance with any exception in paragraph (2)

1 shall not disclose such information to any other
 2 person unless such disclosure would be lawful if
 3 made directly to such other person by the finan-
 4 cial institution or affiliate that provided the in-
 5 formation.

6 “(B) DISCLOSURE UNDER EXCEPTION.—

7 Notwithstanding subparagraph (A), any person
 8 that receives individually identifiable health in-
 9 formation from a financial institution or affil-
 10 iate in accordance with any exception in para-
 11 graph (2) may also use or disclose such infor-
 12 mation only as permitted under that exception
 13 and this subsection.

14 “(5) EXISTING PROTECTIONS FOR HEALTH IN-
 15 FORMATION NOT AFFECTED.—Nothing in this sub-
 16 section shall be construed as—

17 “(A) modifying, limiting, or superseding
 18 standards governing the privacy and security of
 19 individually identifiable health information pro-
 20 mulgated by the Secretary of Health and
 21 Human Services under section 264 of the
 22 Health Insurance Portability and Accountability
 23 Act of 1996, or the amendments made by sec-
 24 tion 262(a) of that Act; or

1 “(B) authorizing the use or disclosure of
2 individually identifiable health information in a
3 manner other than as permitted by other appli-
4 cable law.

5 “(6) RELATION TO STATE LAWS.—

6 “(A) IN GENERAL.—This subsection shall
7 not be construed as superseding, altering, or af-
8 fecting the statutes, regulations, orders, or in-
9 terpretations in effect in any State, except to
10 the extent that such statutes, regulations, or-
11 ders, or interpretations are inconsistent with
12 the provisions of this subsection, and then only
13 to the extent of the inconsistency.

14 “(B) GREATER PROTECTION UNDER STATE
15 LAW.—For purposes of this paragraph, a State
16 statute, regulation, order, or interpretation is
17 not inconsistent with the provisions of this sub-
18 section if the protection that such statute, regu-
19 lation, order, or interpretation affords any per-
20 son is greater than the protection provided
21 under this subsection, as determined by the ap-
22 propriate enforcement authority referred to in
23 section 505, on its own motion or upon the pe-
24 tition of any interested party.

1 “(7) FEDERAL AND STATE ACTION.—The At-
 2 torney General of the United States or the Attorney
 3 General of a State, or the State bank supervisor, as
 4 defined in section 3 of the Federal Deposit Insur-
 5 ance Act, as appropriate, may impose a fine of not
 6 more than \$25,000 per record, per person, affiliate,
 7 or nonaffiliated person to which the record was dis-
 8 tributed in violation of this subsection.”.

9 **SEC. 3. DEFINITION OF INDIVIDUALLY IDENTIFIABLE**
 10 **HEALTH INFORMATION.**

11 Section 509 of the Gramm-Leach-Bliley Act (15
 12 U.S.C. 6809) is amended by adding at the end the fol-
 13 lowing new paragraph:

14 “(12) INDIVIDUALLY IDENTIFIABLE HEALTH
 15 INFORMATION.—The term ‘individually identifiable
 16 health information’ means any information, includ-
 17 ing demographic information obtained from or about
 18 an individual, that is described in section
 19 1171(6)(B) of the Social Security Act.”.

20 **SEC. 4. EFFECTIVE DATE.**

21 This Act and the amendments made by this Act shall
 22 become effective 90 days after the date of enactment of
 23 this Act.

○